



August 11, 2000

Mr. Roland Castañeda  
General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2000-3059

Dear Mr. Castañeda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137926.

The Dallas Area Rapid Transit ("DART") received three requests for similar information. Combined, all three of the requests seek information pertaining to Invitation to Bid No. B-99034885, certain DART employees, different types of printing services obtained by DART from March 1, 1999 to June 15, 2000, and contracts that DART awarded or offered to white anglo-saxon males in comparison to minority contractors. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the information at issue.<sup>1</sup>

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation has been pending or reasonably anticipated since the date of receipt of the request, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of all of the information at issue. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

n.r.e.); Open Records Decision No. 551 at 4 (1990); Gov't Code § 552.103. The governmental body must meet both prongs of this test for information to be excepted under section 552.103.

You note that this office recently issued two letter rulings which dealt with information that was similar to, and to some extent identical to, information at issue here. Open Records Letter No. 2000-1980 (2000); Open Records Letter No. 2000-1779 (2000). In both of those letter rulings, this office found that DART reasonably anticipated litigation regarding claims related to the solicitation and procurement of certain contracts. *See id.* You explain and provide evidence to indicate that circumstances have not changed since the issuance of those letter rulings. In other words, DART continues to anticipate such litigation. Based on this representation, we find that litigation is reasonably anticipated in this instance. Moreover, you explain that the requested information relates to the anticipated litigation. The submitted representative sample supports this contention. Based on this representation, we find that DART has made the proper showing, and may therefore withhold the requested information under section 552.103.

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information and such information must be disclosed. Open Records Decision Nos. 349 (1982), 320 (1982). Some of the submitted information was written by or sent to the opposing party in the anticipated litigation. DART may not withhold this type of information under section 552.103. In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Because section 552.103 is dispositive of this matter, we do not address your other arguments at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

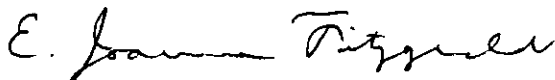
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/er

Ref: ID# 137926

Encl. Submitted documents

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cc: Ms. Venora Byrd  
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